Supreme Court of the United States

OCTOBER TERM 1944

No.

In the Matter of the Application of the

UNITED STATES OF AMERICA,

Respondent,

for a Writ of Prohibition and/or Mandamus

against

The Honorable FRANCIS G. CAFFEY, Judge of the District Court of the United States for the Southern District of New York, et al.,

Petitioners.

BRIEF IN SUPPORT OF PETITION

FIRST POINT

The question presented is one of general importance and calls for determination by this Court.

Respondent does not deny that the ARCHER was owned by the United States but asserts that the ARCHER, having been converted into a Naval vessel, was physically delivered to the British for use as unit of the British Navy pursuant to the provisions of the Lend-Lease Act.

Many hundreds of self-propelled vessels, convoy-escort aircraft carriers, destroyers, landing barges, PT boats, and other fighting craft, as well as cargo vessels, have been delivered to the British and to our other Allies under the Lend-Lease Act. Ownership of all of these remains in the United States. In his Fifteenth Report to Congress on Lend-Lease Operations for the Period Ended March 31, 1944 the President said:

> "The export figures show not quite $200,000,000 worth of watercraft sent to the United Kingdom. That is the cost of the landing barges, the PT boats and other fighting craft small enough to be shipped aboard cargo vessels. We have also leased to the British over 30 convoy-escort aircraft carriers and many more destroyer escorts and corvettes, in addition to merchant ships. Ships that are leased and sail away under their own power are not included in the export figures. We have leased to the British most of the 1,400 naval craft so far turned over to the forces of our allies. All warships and merchant ships leased under the Lend-Lease Act are leased for the duration of the war. Title remains with the United States" (p. 17).

Many of these vessels, owned by the United States, have been in collision and have caused damage to privately owned vessels and other property. Many claims exist against the United States because of damage done by this vast fleet, these claims being on the theory of liability *in rem,* which the District Court held was contemplated by the Public Vessels Act. The decisions of the Courts below are, we believe, the only decisions on the point involved but, in view of the large volume of potential litigation and the fact that the Circuit Court of Appeals based its decision primarily upon a procedural provision of the statute in disregard of the many reasons to the contrary, an authoritative decision by this Court is, we believe, called for.

The circumstances of this case illustrate the need for an early decision. Theoretically the British Government is liable (assuming negligence) because of the fault of its servants in command of the ARCHER and the British Government allows suit against its commanding officer provided the suit is brought within one year. In the case at bar the decision of the District Court sustaining the jurisdiction was handed down fourteen months after the collision and the decision of the Circuit Court of Appeals denying the jurisdiction was not handed down until more than two years after the collision. It was then too late for the libellants to proceed in Britain. Many claims in other cases await a final determination of the jurisdictional question in this case by this Court in the hope and belief that it will not be necessary for American shipowners to prosecute in England *in rem* claims against vessels admittedly owned by the United States.

SECOND POINT

The ARCHER was a "public vessel of the United States".

The statute confers jurisdiction of suits against the United States for "damages caused by a public vessel of the United States". If the ARCHER was a "public vessel of the United States" the District Court has jurisdiction. She was a "public" vessel because she was a Naval vessel engaged in the defense of the United States, and she was a "vessel of the United States" because she was owned by the United States.

The delivery of the ARCHER to the British for operation by them as a unit of their Navy was, according to re-

spondent's exceptive allegations "made pursuant to the provisions of Public Law 11, 77th Congress, 1st Session, approved March 11, 1941" (R. 12), i.e. the Lend-Lease Act, c. 11, Sec. 3, 55 Stat. 31, Title 22 U. S. Code, Sec. 412. This section empowers the President "when he deems it in the interest of national defense" to authorize the loan, lease, etc. of any "defense article", which includes ships, to "the government of any country whose defense the President deems vital to the defense of the United States". It is inescapable, therefore, that the President deemed the defense of Britain vital to the defense of the United States when the ARCHER was delivered to the British. Therefore, although in the British service, she was engaged in the defense of the United States. It cannot be denied that this is a "public" service.

Respondent admits ownership of the ARCHER, which requires the conclusion that she was a "vessel of the United States". The title of the Public Vessels Act is

> "An Act authorizing suits against the United States in admiralty for damage caused by and salvage services rendered to public vessels *belonging to* the United States, and for other purposes" (Italics ours).

The title may be resorted to for clarification if need be. *Bengzon* v. *Secretary of Justice,* 299 U. S. 410, 416. Therefore, the words of Sec. 1 of the Act, "vessel of the United States", mean "vessel belonging to the United States". This is the natural meaning of the phrase "of the United States". *Ellis* v. *United States,* 206 U. S. 246, 259; *Poe* v. *Seaborn,* 282 U. S. 101.

The Circuit Court of Appeals conceded that it is "indeed, a plausible conclusion" (R. 41) that the ARCHER was a "public vessel of the United States". However, the Court re-

fused to accept as a fact respondent's admission that the United States owned the ARCHER, saying that "the question of her ultimate disposition, and indeed of her actual ownership, was left at large by the Lend-Lease Act * * *" (R. 42—compare the President's statement that "Title [to lend-lease vessels] remains with the United States" (supra, p. 10). Then the Circuit Court of Appeals, relying solely upon an administrative provision of the Act to determine its scope, held that the District Court was without jurisdiction by reason of Section 4 of the Act. This section provides:

> "No officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the Secretary of the Department or the head of any independent establishment of the government having control of the vessel at the time the cause of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena" (46 U. S. Code, Section 784).

The Court entertained the view that the language of this section limits the grant of jurisdiction to damage caused by public vessels of the United States under the control of some department or some independent establishment of the United States. In other words, the Court, because of Section 4, has added to Section 1 after the words "damages caused by a public vessel of the United States" the words, *not* chosen by Congress, "while in the control of some department or some independent establishment of the United States".

Section 1 of the Act contains the grant of jurisdiction and there are no words of limitation such as those inserted by the Circuit Court of Appeals. The only requirement imposed by Congress is that the damage be "caused by a public vessel of the United States".

Section 4 does not purport to deal with the class of cases of which jurisdiction is granted but deals only with the conditions upon which witnesses from the public vessel may be subpoenaed. It requires that the consent either of the Secretary of the Department or head of the independent establishment of the government having the control of the vessel at the time the cause of action arose *or* the master of such vessel at the time of the issuance of the subpoena be obtained in advance. This section is readily applicable, without distortion, to the situation at bar, i.e. although the ARCHER was not under the control of any department or independent establishment of the United States when the cause of action arose, none of her officers or crew could be subpoenaed without first obtaining the consent of the master or commanding officer of the vessel at the time of the issuance of the subpoena.

THIRD POINT

The legislative history of the Act establishes that Congress deliberately intended to authorize suit in cases such as this.

Prior to the enactment of the Public Vessels Act Congress had been obliged to consider, and had adopted, numerous private acts authorizing suit for damage caused by public vessels. One of its purposes in adopting the Act was to avoid this unnecessary labor by adopting general legislation. The reports of the Senate and House Committees on Claims, which are identical, state:

> "The chief purpose of this bill is to grant private owners of vessels and of merchandise a right of action when their vessels or goods have been damaged as

> the result of a collision with any government-owned vessel, though engaged in public service, without requiring an application to Congress in each particular instance for the passage of a special enabling act" (House Report 913, 68th Congress, 1st Session, page 1; Senate Report No. 941, 68th Congress, 2nd Session, page 1).

It is noteworthy that the words employed are "government-owned vessel".

A coeval purpose was to correct what both Committees called the "injustice" of the previously existing situation whereby the United States could sue the privately-owned vessel or her owner for collision damage to public vessels owned by the United States but the private owner could not sue the United States for the damage sustained by him in the same collision. The Committees said:

> "Under the law as it now stands, no judicial relief is available to a shipowner for damages caused by the negligent navigation of a public vessel of the United States. * * *
>
> Nevertheless, the United States, while immune from the action of a private suitor in such cases, may, and does, sue the vessels of private owners, has its day in Court without the risk of costs being awarded against it, and, when the government vessel is found to have been at fault, refuses to pay the damages sustained by the private owner (*The Esparta*, 160 Fed. 289).
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> The injustice of such a system of relief has often been expressly recognized by Congress and by the courts" (Committee reports, supra, p. 2).

In other words, the Committees intended to enact reciprocity so that when a public vessel owned by the United States and a privately owned vessel come into collision the private owner can sue the United States for damage to his vessel just as the United States can sue the private owner for the damage done to the vessel belonging to the

United States. As owner of the ARCHER the United States could sue Agwilines, Inc. for the damage suffered by the ARCHER and could have sued the BRAZOS *in rem* had she not become a total loss. The decision below, contrary to the plainly declared intent of the Committees, deprives the private owner of the reciprocal right to sue the United States.

The debates in the Senate and House confirm the foregoing. In the House Mr. Underhill, who introduced and sponsored the bill, said:

> "The bill I have introduced simply allows suits in admiralty to be brought by owners of vessels whose property has been damaged by collision or other fault *of Government vessels* and Government agents." Congressional Record, 68th Congress, 2d Session, January 19, 1925, p. 2087 (italics ours).

In the Senate, Senator Bayard, who sponsored the bill, said:

> "Mr. President, the Senator from Arkansas is quite right; it is a measure of great importance. There are continuous applications being made to the Claims Committee of both Houses for the consideration of bills to reimburse people who have suffered damage from maritime accidents in which *United States vessels* are concerned, to enable them to present their suits in the various district courts. In this last Congress there were nearly 200 such claim bills introduced in the two Houses.
>
> Outside of that, there are many claims which must be settled by the Department of State, because our own nationals are forbidden going into our own Courts, and the nationals of other countries cannot come in, and this bill is to remedy that situation. It would give a person aggrieved because of an accident *by reason of the shortcomings of a United States ship* the right to go into a district court and prosecute his action." Congressional Record, 68th Congress, 2d Session, February 12, 1925, p. 3560 (italics ours).

Nothing in the legislative history of the Act indicates any purpose to confine the jurisdiction to situations where government-owned vessels are operated by departments or independent establishments of the United States. We do not doubt that Lend-Lease was not contemplated by Congress when the Public Vessels Act was before it. On the other hand, in enacting the Lend-Lease Act Congress could, had it wished, have excluded vessels loaned or leased to foreign governments from the Public Vessels Act by a simple proviso. Since reciprocity of suit was one of the cardinal reasons for the Act, and since the United States can sue the private owner for damage to vessels owned by it although they have been delivered under lend-lease to foreign governments, the private owner should not be deprived of the reciprocal right to sue which Congress plainly intended he should have.

FOURTH POINT

The provisions for liability as *in rem* establish that Congress intended to grant jurisdiction in cases such as this.

Below respondent attempted to evade the question by arguing that the Act should not be considered as authorizing suit against the United States for a tort committed by a foreign government. True, the ARCHER's tort was a tort of the British government because its personnel was in control. However, in admiralty, the vessel, as a legal entity, is liable *in rem* for her torts and Congress has authorized suit against the United States *in personam* in form but upon the principles of liability *in rem* as well as

in personam. The libellant elected to proceed *in rem* (R. 10).

Section 1 of the Act authorizes suit for damage "caused by a public vessel of the United States". The vessel is personified and spoken of as the offending thing. Section 2 of the Act provides that the suit shall be brought in the district where "the vessel or cargo charged with creating the liability is found". Here again the vessel is personified and referred to as "creating the liability". The language of both sections plainly contemplates liability *in rem*.

In his letter of recommendation to the Committee on Claims concerning the bill which became the Public Vessels Act Mr. Chief Justice Stone, then Attorney General, declared his understanding that the vessel was regarded as the offender and that the bill authorized suit on *in rem* principles—see pages 11-12 of Senate Report No. 941, 68th Congress, 2d Session, and House Report No. 913, 68th Congress, 1st Session:

> "Suggestions which have come to my notice favoring the bill include the view that the practice of admiralty and international law and procedure place such torts separate and apart from the ordinary torts committed on land, as the vessel is defined the offender rather than the owner of the vessel.
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> * * * * * * * *
>
> "I do not understand from the proposed bill whether the relief to be granted shall be determined upon principle of *in rem* liability solely or whether it shall be determined both *in rem* and *in personam* liability." (Italics ours.)

Patently the then Attorney General understood that the Act contemplated *in rem* liability and was doubtful only whether the Act contemplated *in personam* liability as well.

Furthermore the Public Vessels Act expressly incorporates the provisions of the Suits in Admiralty Act. Section 2 of the Public Vessels Act provides:

> "* * * Such suits shall be subject to and proceed in accordance with the provisions of Chapter 20 or any amendment thereof, insofar as the same are not inconsistent herewith, except that no interest shall be allowed * * *."

Chapter 20 is the Suits in Admiralty Act, Section 3 of which provides in part as follows:

> "Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties * * *. If the libellant so elects in his libel, *the suit may proceed in accordance with the principles of libels in rem* wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libellant in any proper case from seeking relief in personam in the same suit. * * *" March 9, 1920, c. 95, §3, 41 Stat. 526; Title 46 U. S. Code, Section 743 (italics ours).

In *State of Maine* v. *United States*, 45 F. Supp. 35, aff'd 134 F. (2d) 574, C. C. A. 1, cert. denied 319 U. S. 772, the Court held that the Public Vessels Act should be construed with the Suits in Admiralty Act as a part of the same legislative scheme and that Congress, by the Public Vessels Act, intended to give to private vessel owners "the same rights against the government that they had against each other" (p. 37). Indeed the Circuit Court of Appeals in the case at bar said:

> "The two statutes are to be construed together as part of a plan to give to private owners and operators of vessels the same right of recovery from the government for damages caused by public vessels which they had against each other" (R. 40).

Mr. Chief Justice Stone, then Attorney General, in his letter of recommendation concerning the bill which became the Public Vessels Act said:

> "The proposed bill intends to give the same relief against the government for damages caused by collision by its public vessels and for compensation for towage and salvage services rendered to public vessels as is now given against the United States in the operation of its merchant vessels, as provided by the Suits in Admiralty Act of March 9, 1920" (p. 11, Senate Report No. 941, 68th Congress, 2d Session).

Since this was admittedly the purpose of Congress, since the Suits in Admiralty Act expressly authorizes suit on principles of liability *in rem*, and since the Public Vessels Act expressly incorporates the provisions of the Suits in Admiralty Act, the District Court has jurisdiction of claims against the United States based upon allegations of liability *in rem*. It is well established that when a vessel is in collision she is liable *in rem* although officered, manned and controlled by servants of another rather than her owner. *The Barnstable*, 181 U. S. 464, 467; *The China*, 7 Wall. 53, 68-9; *Ralli* v. *Troop*, 157 U. S. 386, 402-3; *The John G. Stevens*, 170 U. S. 113, 120; *The Moosabee*, 7 F. (2d) 501, aff'd 1 F. (2d) 964, C. C. A. 4; *The Coldwater*, 283 Fed. 146; *The Florence H.*, 248 Fed. 1012.

LAST POINT

It is respectfully submitted that the writ of certiorari prayed for should be granted, that the order for a writ of prohibition made by the Circuit Court of Appeals be reversed and the jurisdiction of the District Court sustained with costs.

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New York, N. Y.
August 16, 1944.

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